IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 21ST NOVEMBER 2007 / 30TH KARTHIKA 1929

WP(C).No. 363 of 2004(R)

PETITIONER:

K.T. JOSEPH, KALARIKKAL HOUSE,
PERUMPUNNA P.O., PERAVOOR, KANNUR DISTRICT.

BY ADV. SRI.V.P.SUKUMAR
SRI.P.U.MATHEN

RESPONDENTS:
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1. THE INTELLIGENCE OFFICER,
COMMERCIAL TAXES, THALASSERY,
KANNUR DISTRICT.

2. THE DEPUTY COMMISSIONER,
COMMERCIAL TAXES, KANNUR.

3. THE COMMISSIONER OF COMMERCIAL TAXES,
THIRUVANANTHAPURAM.

4. M.C. RARICHAN, MULANGOTHRA HOUSE,
PURAVAYAL P.O., ULIKKAL,
KANNUR DISTRICT.

5. THE TAHSILDAR (R.R.), THALASSERY,
KANNUR DISTRICT.

BY ADV. SRI.A.MOHAMED MUSTAQUE
SRI.M.K.SUMOD
GOVERNMENT PLEADER SRI. K.P. PRADEEP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C)NO.363 OF 2004

APPENDIX

EXT.P1: COPY OF SHOP INSPECTION REPORT DTD 31.12.1991 PREPARED BY R1.

EXT.P2: COPY OF PENALTY ORDER DTD 25.8.1992 PASSED BY R1.

EXT.P3: COPY OF ORDER DTD 25.4.1995 PASSED BY R2.

EXT.P4: COPY OF PENALTY NOTICE DTD 31.10.2001 ISSUED TO THE PETITIONER BY R1.

EXT.P5: COPY OF LETTER DTD 26.11.2001 SENT BY THE PETITIONER TO R1.

EXT.P6: COPY OF LETTER DTD 4.12.2001 SENT BY THE PETITIONER TO R1 BY REGISTERED POST.

EXT.P7: COPY OF ORDER DT.30.11.2001 PASSED BY R1.

EXT.P8: COPY OF JUDGMENT DTD 7.3.2002 IN O.P.NO.6556 OF 2002-E.

EXT.P9: COPY OF ORDER DTD 7.12.2002 PASSED BY R2.

EXT.P10: COPY OF ORDER DTD 22.3.2003 PASSED BY R3.

EXT.P11: COPY OF RR NOTICE DTD 20.2.2003 ISSUED TO THE PETITIONER BY R5 U/S. 7 OF RR ACT.

EXT.P12: COPY OF RR NOTICE DTD 20.2.2003 ISSUED TO THE PETITIONER BY R5 U/S. 34 OF RR ACT.

EXT.P13: COPY OF THE JUDGMENT DT. 12.3.2003 IN O.P.NO.8316 OF 2003-M PASSED BY THIS HON'BLE COURT.

TRUE COPY

PA TO JUDGE.

C.N.RAMACHANDRAN NAIR, J.

W.P.(C) No. 363 of 2004

Dated, this the 21st day of November, 2007

J U D G M E N T

Petitioner is challenging Ext.P10 order whereunder the Commissioner has confirmed penalty levied on petitioner under Section 45A of the KGST Act for evasion of sales tax for the year 1991-92. Petitioner was the licensee of a foreign liquor shop in Kerala during the year 1991-92. During inspection conducted on 31/12/1991, the department seized documents, which showed purchase of liquor from Mahe and sale of the same at licensee's shop at Kerala without payment of tax. Even though petitioner denied the transaction, the Department rejected the claim because the slipses of purchases and sales were recovered from the shop itself. Moreover, going by the petitioner's claim that he was only a benami for the business carried on by another person, who is 4th respondent herein, I do not think, petitioner is in a position to state facts pertaining to the business as he admittedly allowed 4th respondent to carry on the business under the licence obtained by him. In the circumstacnes, petitioner is not entitled to raise any contention pertaining to the business details of which he was not

fully aware. Even though petitioner may not have carried on business by himself, he is liable for the evasion of tax in the business carried on by another person on his behalf under petitioner's licence. Therefore, penalty is rightly levied on petitioner who was the licencee. So far as, quantum of penalty is concerned, I find from Ext.P7, the original order, that the suppression and unaccounted sale are taken from the slips recovered from the shop itself. In the circumstances, there is no scope for interfering with the quantum of penalty that is demanded based on actual suppression. This writ petition is, therefore, devoid of any merit and is dismissed.

(C.N.RAMACHANDRAN NAIR, JUDGE)

jg